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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,821	10/18/2001	Paul Kostyniak	19226/2091 (R-5629)	8272

7590

05/16/2003

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 07 9221	Applicant(s) KOTYMAK et al
Examiner Neri Levy	Group Art Unit 1616
	7

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 4/25/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-56 is/are pending in the application.
- Of the above claim(s) 1-21, 25, 33-56 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 22-24, 26-32 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-56 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Applicant's election with traverse of Group III, species of MG silicate clay, hexadecyl trimethyl ammonium bromide ligand, insect repellent, skin surface and cream form of application in Paper No. 6 is acknowledged. The traversal is on the ground(s) that there is no merit to separate applications, as inventions are closely related, and elected species are allowable. This is not found persuasive because basis for restriction is on time burden to examination, and absent declaration of equivalence the elected species will be searched.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-21, 25, 33-56 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

In the specification, IPA, inter particle association? According to Webster, does not make sense to examiner – please explain and provide.

Please provide dates for references not yet initialed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-24, 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Matome '99 thesis.

Decreased (delayed) absorption through skin of DEET is the problem to be solved (abstract) Matome does it with HDTMA with colloidal ion exchange capable smectite clays (P.3). HDTMA is as much as 3X cation exchange capability as (abstract, P.4) 2 ligands are used; HDTMA and isopropyl alcohol – acetonitrile (P.5).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-24, 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock et al 5346922 in view of Matome '99.

Beldock shows it is normal to use equivalently, creams, Lotions (col. 2, lines 22-32) with delivery to skin of insect repellents. Beldock approaches DEET toxicity Problem (col. 1, lines 35-61) by substituting. Table 1 clearly shows superiority of DEET. Matome at a later date, solves the DEET toxicity problem by adsorption of colloidal phyllosilicate clays intercalated with HDTMA. It would have been obvious to one of ordinary skill in the art of topical repelling of insects, at the time of the instant invention, to utilize the superior DEET, with the then available means of toxicity reduction as

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shown by Matome. Motivation is an increased repelling efficacy, with reduced toxicity. However, no issue is raised of the potential toxicity of the HDTMA.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR
May 7, 2003



NEIL S. LEVY
PRIMARY EXAMINER